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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/540,316

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Rudi J.M Wijnands

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BRIARCLIFF MANOR, NY 10510

EXAMINER

BAIG, SAHAR A

ART UNIT

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2424

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/540,316	WIJNANDS ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	SAHAR A. BAIG	2424	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 December 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5, 7-11 and 17-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7, 8-11, and 17-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/22/2009 has been entered.

### ***Response to Arguments***

2. Applicant's arguments with respect to claim 12/22/2009 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 1, 2, 4, 10, 11, 17, 18, and 19, rejected under 35 U.S.C. 103(a) as being unpatentable over Berstis et al US Patent No. 6,212,327 in view of De Vos et al US Patent No. 6,128,650 in further view of Bates et al. US Patent No. 6,681,396.

Regarding Claim 1, 2, 10, 17, 18, and 19, Berstis discloses a personal recording and playback system comprising : a receiving means for receiving streaming

audio/visual input from at least one of: broadcast radio, broadcast TV stations, cable TV systems, satellite TV systems, the Internet, and other wide-area networks **[Figure 4B item 412]**; a means for connecting to wide area networks including the Internet and receiving streaming audio or audio/visual input **[Figure 1]**; a user input means for inputting user commands to the recording/playback system **[Figure 1 item 218]**; and, a recording means for transparently: tracking audio or audio/visual preferences of a user of the system **[Col. 2 lines 5-10]**; maintaining a user profile database for storing and maintaining user preferences (*since the stream is monitored for user-defined items it is obvious that the system stores those user-defined items or user profile in memory*); receiving multiple audio or audio/visual streams via the receiving means and storing the received multiple audio or audio/visual streams on the storage means in the background; and, maintaining an audio or audio/visual recording collection according to the user preferences by analyzing the received audio/visual streams **[Col. 5 lines 60-65]**.

However Bersitis fails to explicitly mention a storage mean for storing the received streaming audio or audio/visual input and a user output means for outputting the audio or audio/visual input. Bersitis also fails to disclose the use of virtual channels. In an analogous art, De Vos discloses a recording system. In particular De Vos disclose the storage means **[Col.1 lines 34-35]**; and the user output means **[Col. 1 lines 40-42]**. De Vos also shows the use of virtual channels **[Figure 11]**. Therefore it would have been obvious to one of ordinary

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skill in the art to combine the teachings of De Vos and Bersitis to devise a recording system with sufficient memory for storing the user preferred media content.

Still the combined teachings of Bersitis and De Vos fail to disclose the newly added limitations wherein the personal recording system includes a content analysis means for examining and improving a quality of an audio or audio/visual stream stored in the recording collection and identifying at least one of: a profile of the stream, and voice over sections of the stream, degraded sections of the stream, and commercial detection, wherein the content analysis means improves the quality of the audio or audio/visual stream stored in the recording collection by comparing a title in the audio or audio/visual recording collection to a title stored in a real time file system or a common memory and by either (i) replacing a title in the audio or audio/visual recording collection with a title stored in the real time file system or the common memory or (ii) replacing portions of the title in the audio or audio/visual recording collection in order to remove voice over portions or defects of any kind or commercials.

In an analogous art, Bates discloses a system, for controlling recording of television programs wherein the system detects an interruption of a recording (an incompletely recorded or degraded program) and automatically records the program the next time its is aired [**Col. 2 lines 27-40**]. Therefore it would have been obvious to one of ordinary skill in the art to combine the teachings of Bersitis, De Vos, and Bates to devise a system that records a complete showing

of a program to make the viewing experience more enjoyable.

Regarding Claim 4 and 11, Bersitis discloses a system further including: a selection means for playing audio or audio/visual streams selected by the user via the input device on the user output device from one of: the receiving means; and, the audio/visual collection **[Figure 2** *The user may selectively control operation of data processing system 200 through input entered on keyboard 220 or through pointing device 222]*.

5. Claim 3 and 20, rejected under 35 U.S.C. 103(a) as being unpatentable over Berstis et al US Patent No. 6,212,327 in view of De Vos et al US Patent No. 6,128,650 in further view of Volk et al. US Patent Publication No. 2004/0019497.

Regarding Claim 3 and 20, the combined system of Berstis and De Vos disclose all of the limitations except a most-popular list means for storing the most often broadcasted audio/visual streams, and, the recording means that further: updates the most-popular list with the most often broadcasted audio or audio/visual streams. In an analogous art, Volk discloses a system and method for providing personalized music playback over a network. In particular Volk discloses a method of providing a plurality of hypertext links 434 to stations that are most requested, listened to, or connected to by the various users. That list of hypertext links 434 may be periodically updated and may reflect the users'

listening preferences over a predetermined time period **[0065]**. Therefore it would have been obvious to include the teachings of Volk in the present invention to provide quick access to most popular media content.

6. Claim 5 and 21 rejected under 35 U.S.C. 103(a) as being unpatentable over Berstis et al US Patent No. 6,212,327 in view of De Vos et al US Patent No. 6,128,650 in further view of Bates et al. US Patent No. 6,681,396 in further view of Wang et al. US Patent Publication No. 2002/0083060.

Regarding Claim 5 and 21, the combined teachings of De Vos, Berstis, and Bates disclose all of the limitations of the claimed invention except the use of fingerprint analysis for identifying audio or audio/visual streams by matching a portion or portions of the stream to fingerprints stored in one of a local fingerprint database and a remote fingerprint database. In an analogous art, Wang teaches of a method for recognizing an audio sample locates an audio file that most closely matches the audio sample from a database indexing a large set of original recordings. In particular Wang shows In **FIG. 10A**, a diagonal line of slope approximately equal to one is identified, indicating that the song indeed matches the sample **[0086]**.

Therefore it would have been obvious to one of ordinary skill in the art to include the use of audio fingerprinting analysis to match the songs that are most listened

to by the user with the ones that are being broadcasted.

7. Claim 7 rejected under 35 U.S.C. 103(a) as being unpatentable over Berstis et al US Patent No. 6,212,327 in view of De Vos et al US Patent No. 6,128,650 in further view of Bates et al. US Patent No. 6,681,396 in further view of Porter et al. US Patent No. 6,337,947.

Regarding Claim 7, the combined teachings of Berstis, De Vos, Bates disclose all of the claimed limitations except a video removal means for removing a video portion from an audio/visual stream, leaving an audio portion. In an analogous art, Porter discloses a method for customized editing and/or censoring of video and/or audio signals. In particular Porter discloses that each of the editing parameters corresponds to separate portions of the signal (audio and video) When an editing parameter indicates that the corresponding portion of the signal is to be edited, the selective editing circuit edits the corresponding portion based on the editing parameter, which may be provided by the content provider or by the user. In addition, the editing parameter may indicate various levels of editing the signal. For example, the editing parameter may indicate that the portion of the audio and/or video signal is to be completely blanked, skipped, faded, distorted, or is to be replaced with a substitute audio and/or video signal **[Col.2 lines 20-35]**. Therefore it would have been obvious to one of ordinary skill in the



art to include this feature in the instant invention so that video portions of a media content can be selectively removed leaving behind the aural portions.

8. Claim 8 and 9, rejected under 35 U.S.C. 103(a) as being unpatentable over Berstis et al US Patent No. 6,212,327 in view of De Vos et al US Patent No. 6,128,650 in further view of Bates et al. US Patent No. 6,681,396 in further view of Son et al. US Patent No. 2002/0047899.

Regarding Claim 8 and 9, the combined system of Bersitis, De Vos, and Bates teach all of the claimed limitations except format-check means for determining and decoding a format of an audio or audio/visual stream, the formats including: MPEG2; MPEG4; MP3; Ogg Vorbis; DIVX; Realplayer Real-Video; Realplayer Real-Audio; Microsoft Windows Media; Microsoft Netshow; Apple Quicktime; Xing StreamWorks; and analog. These formats are industry standards and their decoding is well known in the art. Furthermore it is taught in Son along with the use of Plug-ins **[0022]**. Therefore these features would have been obvious to include in the invention for the benefit of decoding multiple types of data.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SAHAR A. BAIG whose telephone number is (571)270-3005. The examiner can normally be reached on Monday-Friday (8:00 - 4:30).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on 571-272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Christopher Kelley/  
Supervisory Patent Examiner, Art  
Unit 2424

SAB